

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7151 of 1985

Date of decision: 16-10-1996

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KANTABEN THAKORBHAI

Versus

STATE OF GUJARAT

Appearance:

None present for Petitioner
Mr.N.D. Gohil for Respondent No. 1, 4
MR GN DESAI for Respondent No. 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 16/10/96

ORAL JUDGEMENT

Heard the learned counsel for the respondents,
and perused the special civil application.

Earlier, in this case arguments were heard of the petitioner and respondents on 30-9-1996, and the order was kept C.A.V. During the course of dictation of the order it was found necessary to take details of some points and therefore the matter was ordered to be listed for further hearing today.

Counsel for the petitioner is not present.

Counsel for respondents No.2 and 3 admit that possession of original plot No.35 has already been taken from the petitioner and that plot is in possession of the person to whom the same has been allotted. The counsel for respondents fairly conceded that they have no knowledge as to whether regular civil suit No.928 of 1986 filed by the petitioner in the Civil Court has been withdrawn or not.

2. On 21-4-1987 this court noticed the fact that the petitioner filed civil suit which is pending in the court of Civil Judge (Senior Division), Surat. Mr. Sanjanwala, learned advocate appearing for the petitioner before this Court gave undertaking on that day that the petitioner will withdraw the said suit. It has further been stated that the suit will be withdrawn before the Civil Court closes for the summer vacation. Though that statement was made on 21-4-1987 and more than nine years have already passed, nothing has been brought on record by the petitioner to show whether the suit has been withdrawn or not. In absence of that material it is difficult to assume and accept that the suit which was filed by the petitioner has been withdrawn. The petitioner cannot be allowed to prosecute two parallel remedies for the same cause and relief. In view of this fact this writ petition deserves to be dismissed on this ground. However, dismissal of this special civil application will not have any effect on the merits of the case in the civil suit.

3. Before parting with this case I am constrained to observe that the action of respondents not to hand over possession of final Plot No.121 to the petitioner after removing the hutments and other unauthorised structures, if any, on the said land is not justified. On 21-4-1987 this court admitted this writ petition for the limited relief to hand over vacant possession of the land allotted to the petitioner on reconstitution, namely, final plot No.121 of T.P.Scheme No.6. Order of this Court dated 21-4-1997 reads as under:

" When this petition came up for hearing before us, we were informed that the petitioner has filed a civil suit which is pending in the

Court of the Civil Judge, Senior Division, Surat. Mr. Sanjanwala, learned advocate, thereupon gave an undertaking that the petitioner will withdraw the said suit. He states that the suit will be withdrawn before the Civil Court closes for the summer vacation.

In the course of submissions for admission of this petition, after some discussion, Mr. Sanjanwala stated that he does not press the relief sought in paragraph 9(A) and the latter part of the relief in regard to possession of original plot No.35 sought in paragraph 9(B). He has given an amendment for the deletion thereof which we have granted. He is directed to carry out the amendment today.

In view of the above amendment, the question of granting interim relief in regard to possession of original plot No.35 does not survive. The interim relief sought in paragraph 9(C) has, therefore, become infructuous. To put it shortly, the only relief which now survives is for a mandamus or any other appropriate writ, direction or order to hand over possession of final plot No.121 to the petitioner by removing hutments and other unauthorised structures, if any, on the land. This is on the premise that local authority is under an obligation, as held by the Supreme Court in the case of Bombay Municipality vs. Advance Builders, reported in AIR 1972 SC 793, to hand over vacant possession of the land allotted to him on reconstitution, namely, final plot No.121, of T.P.S.No.6. For this limited relief we admit the petition and direct rule to issue. Mr. Desai for the second and third respondents waives service of rule. Mr. Anil Dave waives service of rule on behalf of respondents No.1 and 4.

In view of the above, ad interim relief granted earlier in terms of paragraph 9(C) stands vacated. Petition to be expedited. "

In the reply no explanation whatsoever has been given why possession has not been delivered of the reconstituted Final Plot No.121 of T.P.Scheme No.6 to the petitioner. However, it is made clear that in case the suit has been withdrawn by the petitioner then it shall be open to the petitioner to make representation to the respondents concerned to deliver possession of the reconstituted plot No.121. The petitioner shall also send a copy of this

order as well as a copy of the order of the civil court withdrawing the civil suit with such representation. The concerned respondent shall consider the same and pass necessary order and shall also take necessary action for delivering possession of plot No.121 of T.P.Scheme No.6 to the petitioner. In case the concerned respondent considers that possession of plot No.125 cannot be given to the petitioner then a speaking order shall be made and copy of the same shall be sent to the petitioner. This exercise shall be undertaken by the concerned respondent within a period of two months from the date of receipt of representation from the petitioner.

Rule discharged. No order as to costs.

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